

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

UNIFUND CCR PARTNERS,

Appellant,

v.

PATSY A. KINNAMON and MICHAEL FRANCIS HAWKINS, SR.,

Respondents.

DOCKET NUMBER WD73547
(Consolidated with WD73548, and WD73769)

Date: July 17, 2012

Appeal from:
Cass County Circuit Court
The Honorable Daniel W. Olsen, Judge

Appellate Judges:
Division Four: Lisa White Hardwick, Chief Judge, Presiding, Alok Ahuja, Judge and Dale
Youngs, Special Judge

Attorneys:
Thomas M. Martin, Jason C. Bache, Kansas City, MO, for appellant.
Marsha A. Friedman, Ray Edward Sousley, Gregory E. Eufinger, and Stephen B. Small, Kansas
City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

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In 2005 and 2006, Unifund CCR Partners, a general partnership, filed three lawsuits against the Respondents to collect on credit-card debts. Respondents failed to answer or otherwise respond, and Unifund obtained default judgment in all three cases.

In December 2010, more than four years later, the Respondents moved to vacate the default judgments, arguing that, as a general partnership, Unifund lacked standing to maintain the actions in its own name, but should have instead sued in the names of all of its partners. The circuit court granted all three motions. It concluded that, because Unifund lacked standing to sue, the judgments entered in its favor were “void at [their] inception.” Unifund appeals.

REVERSED.

Division Four holds:

Missouri adheres to the common-law “aggregate theory of partnership,” which holds that a partnership has no legal existence separate from its members. One consequence of the aggregate theory is that a general partnership has no authority to sue in the firm name alone; instead, all partners are necessary parties-plaintiff in actions to enforce an obligation due to a Missouri general partnership.

Here, Unifund does not dispute that it should have filed suit in the name of all of its partners, rather than in its firm name. Although Unifund’s pleading may have been defective, however, that issue implicates Unifund’s capacity to sue, not its standing. The capacity of a plaintiff to sue is an affirmative defense which is waived if it is not timely raised in a responsive pleading or motion. Respondents did not timely raise the issue in these cases, but instead defaulted. Respondents’ arguments do not implicate the trial court’s subject-matter jurisdiction to enter the default judgments. Therefore, the default judgments entered in Unifund’s favor were not “void,” and the trial court had no authority to set those judgments aside, five years after their entry.

Before: Division Four: Lisa White Hardwick, Chief Judge, Presiding, Alok Ahuja, Judge and Dale Youngs, Special Judge

Opinion by: Alok Ahuja, Judge

July 17, 2012

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